

## Message Text

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INFO OCT-01 EUR-12 IO-11 ISO-00 FEA-01 AGR-05 CEA-01

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INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05

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TO USMISSION GENEVA PRIORITY

INFO USDEL MTN GENEVA

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E.O. 11652: N/A

TAGS: ETRD, GATT, EC

SUBJECT: GATT PANELS ON DISC AND RELATED TAX PRACTICES

REF: A) GENEVA 27, B) GENEVA 7110 9/17/75

1. IN RESPONSE TO REF (A), PLEASE INFORM GATT SECRETARIAT  
THAT U.S. IS WILLING TO ACCEPT MARIADASON AS CHAIRMAN AND  
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GABRIELSSON AS GATT EXPERT MEMBER OF SUBJECT PANELS. WE

UNDERSTAND THIS COMPLETES AGREEMENT ON PANEL MEMBERSHIP, WHICH SHALL CONSIST OF MARIADASON AS CHAIRMAN, GABRIELSSON AND FALCONER AS GATT EXPERTS, AND PREST AND FORTE AS TAX EXPERTS.

2. REQUEST YOU FURTHER PROPOSE TO GATT SECRETARIAT AND EC THAT WORK OF PANELS BE COMMENCED BY INITIAL MEETING TO DETERMINE PANEL PROCEDURES. REQUEST YOU RAISE WITH GATT SECRETARIAT AND EC QUESTION WHETHER SUCH MEETING ON PROCEDURES SHOULD BE WITH ALL PANEL MEMBERS, OR SOLELY CHAIRMAN, WHO WOULD DETERMINE PROCEDURES ON BEHALF OF PANELS. SUGGEST THAT MOST CONVENIENT AND EXPEDITIOUS COURSE MIGHT BE TO HAVE CHAIRMAN ALONE DETERMINE PROCEDURES WITH THE PARTIES.

3. WOULD ALSO APPRECIATE INFORMATION ON WHETHER GATT SECRETARIAT PAYS COMPENSATION AND TRAVEL EXPENSES OF PRIVATE

MEMBERS AS WELL AS ADMINISTRATIVE EXPENSES, SUCH AS COST OF TRANSCRIPT OF PROCEEDINGS, OR WHETHER OTHER ARRANGEMENTS NEED BE MADE. IF LATTER IS CASE, PLEASE DISCUSS WITH SECRETARIAT AND EC.

4. WE RECOGNIZE THAT DETERMINATION OF PROCEDURES TO BE USED BY PANELS IS A PREROGATIVE OF PANELS. AT THE SAME TIME, WE BELIEVE THAT THE ADOPTION OF THE PROCEDURES BY THE PANELS WOULD BE FACILITATED IF, PRIOR TO THEIR CONSIDERATION OF PROCEDURES, THE UNITED STATES AND EC WERE EITHER IN AGREEMENT ON MUTUALLY ACCEPTABLE PROCEDURES OR AT LEAST AGREED ON CERTAIN PROCEDURES WITH ANY DIFFERENCES OF VIEW HIGHLIGHTED AND EXPLAINED FOR THE PANELS' BENEFIT. THE UNITED STATES HAS ALREADY SUBMITTED TO THE EC PROPOSED PROCEDURES, AND OUR REVIEW OF THOSE PROCEDURES THIS PAST WEEK INDICATES THAT, WITH THE CHANGES MENTIONED IN PARAGRAPH 5 BELOW, THEY WOULD CONTINUE TO BE ACCEPTABLE. HOWEVER, THE EC APPARENTLY HAS NOT SUBMITTED PROCEDURES OR COMMENTED ON THE PROCEDURES WHICH WE PROPOSED. PLEASE RAISE THE PROCEDURES QUESTION WITH EC AND GATT SECRETARIAT AND REQUEST EC TO PROVIDE US AS SOON AS POSSIBLE WITH THEIR PROPOSALS FOR PROCEDURES OR THEIR COMMENTS ON THE PROCEDURES WHICH WE HAVE PROPOSED.

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5. REF (B) INDICATED THAT EC CONSIDERED IT PREFERABLE FOR PANEL ITSELF TO DETERMINE PROCEDURES, IN ACCORDANCE WITH PAST PRACTICE. WE HAVE NO PROBLEM WITH ACCEPTING THIS SUGGESTION. THEREFORE, PARA 1 OF THE PROCEDURES WHICH WE PROPOSED EARLIER SHOULD BE AMENDED TO READ AS FOLLOWS: QUOTE. THE PROCEDURAL RULES OF THE PANELS SHOULD BE DETERMINED BY THE CHAIRMAN OF THE PANELS IN

CONSULTATION WITH THE PARTIES. UNQUOTE. SIMILARLY, PARA 5 SHOULD BE CHANGED TO READ AS FOLLOWS: QUOTE. THE TIME FOR THE FILING OF WRITTEN SUBMISSIONS WITH THE PANEL, AND FOR THE CONVENING OF THE HEARINGS, WOULD BE DETERMINED BY THE PANELS IN CONSULTATION WITH THE PARTIES. END QUOTE.

6. TEXT OF PROCEDURES AS REVISED PURSUANT TO PARA 5 ABOVE IS AS FOLLOWS: BEGIN TEXT.

1. THE PROCEDURAL RULES OF THE PANELS SHOULD BE DETERMINED BY THE CHAIRMAN OF THE PANELS IN CONSULTATION WITH THE PARTIES.

2. THE PANELS SHOULD CONSIDER THE EC COMPLAINT AGAINST THE DISC LEGISLATION FIRST AND THEN PROCEED TO CONSIDER SEPARATELY IN SEQUENTIAL ORDER THE UNITED STATES COMPLAINTS AGAINST THE TAX PRACTICES OF FRANCE, BELGIUM, AND THE NETHERLANDS. THE DECISIONS IN ALL FOUR CASES WOULD BE MADE SIMULTANEOUSLY, HOWEVER.

3. IN CONSIDERING EACH COMPLAINT, THE PANEL COULD ADOPT THE FOLLOWING FORMAT:

A. THE COMPLAINING PARTY WOULD SUBMIT A WRITTEN PRESENTATION OF ITS CASE, INCLUDING ANY SUPPORTIVE EVIDENTIARY MATERIAL.

B. THE PANEL WOULD HOLD AN INITIAL MEETING IN WHICH IT WOULD HEAR (1) OPENING STATEMENTS BY THE OPPOSING PARTIES SETTING FORTH THE BASIS OF THEIR POSITIONS, AND (2) THE ORAL PRESENTATION OF THE COMPLAINANT'S CASE, INCLUDING THE SUBMISSION OF STATISTICS, DATA, OR OTHER FACTUAL EVIDENCE OF BI-LEVEL PRICING. MEMBERS OF THE PANEL WOULD, AS THEY MAY DESIRE, QUESTION THE PARTIES LIMITED OFFICIAL USE

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DURING ORAL PRESENTATION OF THEIR CASES.

C. THE RESPONDING PARTY WOULD SUBMIT A WRITTEN PRESENTATION OF ITS CASE, INCLUDING ANY SUPPORTIVE EVIDENTIARY MATERIAL.

D. THE PANEL WOULD MEET TO HEAR (1) AN ORAL PRESENTATION OF RESPONDING PARTY'S CASE AND (2) CONCLUDING ARGUMENTS BY BOTH PARTIES, AGAIN, WITH THE OPPORTUNITY FOR QUESTIONS BY PANEL MEMBERS.

E. COMPLAINANT WOULD HAVE A RIGHT TO SUBMIT BRIEF WRITTEN ARGUMENT IN REBUTTAL. THE RESPONDING PARTY WOULD HAVE A SIMILAR RIGHT OF REPLY.

4. THE SEQUENCE OUTLINED IN PARAGRAPH 3 WOULD BE REPEATED FOR EACH OF THE COMPLAINTS AGAINST THE TAX PRACTICES OF FRANCE, BELGIUM, AND THE NETHERLANDS. IN THE INTEREST OF LIMITING THE NUMBER OF PANEL MEETINGS, THE THREE COMPLAINTS SHOULD BE CONSIDERED IN COMBINATION IN A SINGLE SERIES OF PANEL MEETINGS.

5. THE TIME FOR THE FILING OF WRITTEN SUBMISSIONS WITH THE PANEL, AND FOR THE CONVENING OF THE HEARINGS, WOULD BE DETERMINED BY THE PANELS IN CONSULTATION WITH THE PARTIES.

6. AT THE MEETINGS, EACH PARTY WOULD BE ALLOTTED A SPECIFIED TIME IN WHICH TO MAKE AN ORAL PRESENTATION OF ITS CASE AND TO PRESENT OPENING STATEMENT AND CLOSING ARGUMENT.

7. COUNSEL FOR THE PARTIES WOULD MAKE ORAL PRESENTATIONS AND ARGUMENTS.

8. THE PROCEEDINGS OF THE PANELS WOULD NOT BE OPEN TO THE PUBLIC OR THE PRESS.

9. A FULL RECORD OF THE PROCEEDINGS WOULD BE MAINTAINED BY THE GATT SECRETARIAT AND PROVIDED TO THE PARTIES.

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10. THE PANEL WOULD SUBMIT A WRITTEN REPORT OF ITS DECISION IN EACH CASE WITH A STATEMENT OF ITS REASONS.

11. THE PANEL SHOULD MAKE AN EFFORT TO ARRIVE AT A CONSENSUS IN MAKING ITS DECISION IN EACH CASE. IF A CONSENSUS DECISION CANNOT BE REACHED, THE DECISION SHOULD BE BY MAJORITY VOTE. END TEXT. KISSINGER

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